

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:19-CV-00086-KDB-DSC**

JEAN SMITH,

Plaintiff,

v.

**MANHEIM REMARKETING, INC AND
COX AUTOMOTIVE VEHICLE
ACQUISITION SERVICES, LLC,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ “Motion to Dismiss” (document #5) filed July 15, 2019, Plaintiff’s “Motion to Amend” (document #9) filed August 7, 2019, and Plaintiff’s “Renewed Motion to Amend and to Correct Typographical Error” (document #11) filed August 21, 2019.

Rule 15 of the Federal Rules of Civil Procedure governs amendments to pleadings. Rule 15(a)(1) grants a party the right to “amend its pleading once as a matter of course,” if done within twenty-one days after serving the pleading,” Fed. R. Civ. P. 15(a)(1)(A), or “if the pleading is one to which a responsive pleading is required,” a party may amend once as a matter of course, provided that it does so within “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). The Rule further provides that leave to amend shall be freely given “when justice so requires.” Id.

Although the Fourth Circuit has not addressed the issue, District Courts in this Circuit have held that an extension of time to respond to a motion to dismiss extends the time to amend as a matter of course. See Superior Performers, Inc. v. Phelps, No. 1:15CV134, 2015 WL 13650060, at *1 (M.D.N.C. May 15, 2015) (quoting Hurd v. NDL, Inc., No. CCB-11-1944, 2012 WL 642425, at *1 (D. Md. Feb. 27, 2012) (“[Plaintiff] filed her amended complaint 31 days after the defendants filed their motion to dismiss under Rule 12(b)(6). However, because [she] requested and was granted an extension of time to file her response, the court will consider the amended complaint timely and therefore permitted as a matter of course.”); Jackson v. Merscorp, Inc., No. 1:12CV1205, 2013 WL 12190523, at *1 (M.D.N.C. May 20, 2013) (same);

Plaintiff filed her Motion to Amend within the extended time for responding to Defendants’ Motion to Dismiss. See Text-Only Order entered July 23, 2019. Accordingly, the first request for amendment is as a matter of course.

It is well settled that an amended pleading supersedes the original pleading and that motions directed at superseded pleadings are to be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (amended pleading renders original pleading of no effect); Turner v. Kight, 192 F. Supp. 2d 391, 397 (D. Md. 2002) (denying as moot motion to dismiss original complaint on grounds that amended complaint superseded original complaint).

IT IS THEREFORE ORDERED that:

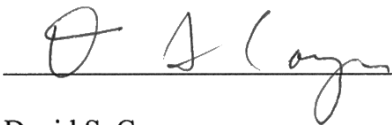
1. Plaintiff’s “Motion to Amend” (document #9) is GRANTED. Plaintiff shall file her Amended Complaint within five days of this Order.
2. Defendants’ “Motion to Dismiss” (document #5) is administratively DENIED as moot without prejudice.

3. Plaintiff's "Renewed Motion to Amend and to Correct Typographical Error" (document #11) is DENIED as moot.

4. The Clerk is directed to send copies of this Order to counsel of record and to the Honorable Frank D. Whitney.

SO ORDERED.

Signed: September 12, 2019

A handwritten signature in black ink, appearing to read "D S Cayer", is written over a horizontal line.

David S. Cayer
United States Magistrate Judge

